

REPORTS ANALYSIS DIVISION REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: June 11, 2012

ANALYST: Jill Sugarman

I. COMMITTEE: Friends of Weiner
C00327742
Nelson Braff, Treasurer
1 Ascan Avenue, #31
Forest Hills, NY 11375

II. RELEVANT STATUTES: 11 CFR § 102.9
11 CFR § 110.1

III. BACKGROUND:

Excessive, Prohibited and Other Impermissible Contributions (Failure to Refund or Redesignate General Election Contributions within 60 Days of the Candidate's Decision Not to Participate in that Election)

Friends of Weiner ("the Committee") received 2012 General Election contributions from twenty-seven (27) individuals that were not refunded or redesignated within the permissible timeframe from the date Anthony D. Weiner ("the Candidate") announced his decision not to participate in the 2012 Primary Election. The contributions total \$66,700.00, as disclosed on the 2011 April Quarterly and 2011 July Quarterly Reports (Attachment 2).

On April 15, 2011, the Committee filed the 2011 April Quarterly Report covering the period from January 1, 2011 to March 31, 2011 (Image 11930704386). This report disclosed contributions totaling \$42,100.00 from seventeen (17) individuals on Schedule A supporting Line 11(a)(i) (Itemized Contributions from Individuals/Persons Other Than Political Committees) of the Detailed Summary Page that were designated for the 2012 General Election (Attachment 3).

On June 16, 2011, the Candidate resigned from Congress and ended his candidacy for the 2012 Primary Election.

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On July 15, 2011, the Committee filed the 2011 July Quarterly Report covering the period from April 1, 2011 to June 30, 2011 (Image 11931924381). This report disclosed contributions totaling \$24,606.00 from ten (10) individuals on Schedule A supporting Line 11(a)(i) of the Detailed Summary Page that were designated for the 2012 General Election (Attachment 3).

On January 31, 2012, a Request for Additional Information (RAI) referencing the 2011 October Quarterly Report was sent to the Committee noting the requirement that the Committee refund or redesignate all 2012 General Election contributions within sixty (60) days of the Candidate's announcement not to seek re-election and requesting that the Committee take corrective action (Image 12330001328).

On February 17, 2012, the Reports Analysis Division (RAD) Analyst contacted the treasurer, Nelson Braff, and explained that the contributions designated for the 2012 General Election must be remedied. Mr. Braff advised the RAD Analyst to contact Karl Sandstrom, Counsel for the Committee, about this matter. On the same day, the RAD Analyst left a voice mail message for Mr. Sandstrom and asked that he return the call (Attachment 4).

On February 22, 2012, the RAD Analyst contacted Mr. Sandstrom regarding the RAI requesting that the Committee refund the 2012 General Election contributions. The Analyst told him this issue could be referred for further action if left unresolved. Mr. Sandstrom said the Committee was allowed to spend those funds on certain designated activities, and that the response to the RAI would explain this in detail (Attachment 4).

On February 23, 2012, the Committee filed a Miscellaneous Electronic Document ("Form 99") in response to the RAI. In part, the Committee stated:

"The Committee used the funds that were in the committee's account to pay, as allowed in section 113.2 of the Commission's regulations, the ordinary and necessary expenses incurred in connection with the Congressman's duties as holder of federal office including costs associated with the winding down of the Congressional office. None of the funds contributed for the general election were used to promote his election to any office. The Committee refunded contributions to every contributor who requested a refund. The regulations expressly provide without any limitation that funds in a campaign account may be used for the purpose described above (Image 12950636569)."

On March 26, 2012, the RAD Analyst called Mr. Sandstrom about the Committee's response to the RAI. The Analyst advised Mr. Sandstrom that according to the regulations and other guidance, including Advisory Opinions, contributions designated for a general election in which a candidate does not participate should be redesignated or refunded within sixty (60) days of the candidate's withdrawal from the race. The Analyst explained that the Committee could avail themselves of the Program

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for Requesting Consideration of Legal Questions by the Commission, per Policy Statement issued as Notice 2011-11. Otherwise, RAD would proceed with referring the Committee for further action. Mr. Sandstrom asked the Analyst to call him the following day when he would have more time to discuss the matter (Attachment 4).

On March 27, 2012, The RAD Analyst called, but was unable to reach Mr. Sandstrom. The Analyst left a voice mail message (Attachment 4).

On March 28, 2012, the RAD Analyst had a discussion with Mr. Sandstrom regarding the 2012 General Election contributions. The Analyst reiterated that contributions designated for a general election in which a candidate does not participate should be redesignated or refunded within sixty (60) days of the candidate's withdrawal from the race. Among other items, the Analyst suggested Mr. Sandstrom look at Advisory Opinions 1992-15, 1988-41, 2003-18 and 1994-31, all of which discussed the disposal of general election contributions when the candidate was not participating in the general election. The Analyst again explained that RAD could either refer the matter to another office for further action, or the Committee could submit a request for consideration of a legal question by the Commission. Mr. Sandstrom said the Committee does not have the resources to refund these contributions. He asked if there was anyone he could speak to who could resolve this matter. The Analyst offered to have RAD Management contact him. On the same day, RAD Management left a voice mail message for Mr. Sandstrom (Attachment 4).

On March 29, 2012, RAD Management contacted Mr. Sandstrom about the contributions received for the 2012 General Election. Mr. Sandstrom stated that the regulations and Commission guidance do not clearly indicate that general election contributions always have to be refunded or redesignated, or that they are not subject to the permissible uses of residual funds. RAD Management referred Mr. Sandstrom to 11 CFR § 110.1(b)(3)(C), which states that "[i]f the candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated." Mr. Sandstrom cited regulations on the permissible uses of residual funds, and said that the Committee acted in accordance with them. He also noted that different parts of the regulations appear to contradict each other, such as allowing residual funds to be used to repay campaign expenses versus requiring committees to refund all general election contributions.

Mr. Sandstrom further noted that it is a common practice for candidates running in a primary election to use the general election funds to pay for expenses they anticipate would be related to the general election. RAD Management responded that RAD considers 11 CFR § 110.1(b)(3)(C) to be the governing regulation and if a committee chooses to spend the general funds in this way, they do so at their own risk, since the contributions may need to be refunded if the candidate does not go on to the general election. Mr. Sandstrom then brought up a hypothetical situation where a candidate running in the primary election dies. If this candidate spent some of the general election contributions on permissible activities, Mr. Sandstrom said the Commission would not

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seek their recovery even though this candidate would not be participating in the general election.

RAD Management advised Mr. Sandstrom to file a Form 99 to explain his position and legal arguments. If the Form 99 raises a legal issue, RAD would ask for advice from the Office of General Counsel (OGC), and if OGC agrees with RAD, there are two possible routes. RAD could proceed with a referral or the Committee could seek the Commission's consideration of the matter directly, under the Program for Requesting Consideration of Legal Questions by the Commission. Mr. Sandstrom said the Committee was planning to terminate and did not have the funds to refund the contributors. Since the legal expense is an issue for the Committee, Mr. Sandstrom said it would be best for him to file a Form 99 and let RAD refer the matter, rather than seeking the Commission's consideration. RAD Management let him know that information from the Form 99 and the RAD phone logs would be included in the referral. Mr. Sandstrom said he would try to contact the Committee, which is now defunct, and start preparing the Form 99. It was agreed that RAD Management would follow up with him in two weeks (Attachment 4).

On April 18, 2012, RAD Management contacted Mr. Sandstrom to follow up on their earlier conversation. Mr. Sandstrom reiterated that there is an inconsistency in the regulations between the section on permissible uses of campaign funds (11 CFR §§ 113.1 and 113.2) and the section requiring committees to refund general election contributions if the candidate does not participate in the general election (11 CFR § 102.9(e)(3) and 11 CFR § 110.1(b)(3)(C)). He also mentioned that Chapter 8, "Expenditures and Other Uses of Campaign Funds," of the *Campaign Guide for Congressional Candidates and Committees*, published by the FEC, states "campaign funds may be used for..." – not "some campaign funds may be used for..." when discussing permissible uses of funds. Mr. Sandstrom said the Committee will not be requesting the Commission's consideration of their legal argument. RAD Management inquired if the Committee wants to place any other information on the public record before RAD moves forward with the referral. Mr. Sandstrom wanted to know if the referral would include the points he made during these phone conversations and if there would be an opportunity to respond to the Commission office to which the matter is referred later in the process. RAD Management told Mr. Sandstrom that the referral would include a summary of the arguments he raised. The Committee would receive a copy of the RAD referral once the matter is activated by the office to which it is referred, and be given an opportunity to respond at that point. Mr. Sandstrom said the Committee would not file a statement now, but would do so at that later stage (Attachment 4).

To date, no further communications have been received from the Committee regarding this matter.

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O-Index (2011-2012)

Cmte. ID: C00327742 Cmte. Name: FRIENDS OF WEINER

Treasurer Name: BRAFF, NELSON Address: 254 PARK AVE SOUTH SUITE 12A, NEW YORK, NY 10010

Cmte. Type: H (HOUSE) Cmte. Designation: P (PRINCIPAL CAMPAIGN COMMITTEE OF A CANDIDATE) Filing Frequency: QUARTERLY FILER

Form Tp	Rpt Tp	Alt	Recpt Dt	Pgs	Begin Img#	Begin Cvg Dt	End Cvg Dt	Ltr Mail Dt	Begin Cash	Receipts	Disb	End Cash	Debits	Loans	Debits & Loans
MS-T			2/23/2012	1	12950636569										
R02	Q3	N	3/31/2012	2	12950636569	1/1/2011	3/31/2011								
F3N	Q1	N	4/15/2011	73	11930704386	1/1/2011	3/31/2011		\$312,268	\$173,367	\$119,963	\$365,670			\$0
F3N	Q2	N	7/15/2011	87	11931894931	4/1/2011	6/30/2011		\$358,670	\$114,328	\$275,298	\$237,867			\$0
F3N	Q3	N	10/15/2011	36	11971625479	7/1/2011	9/30/2011		\$237,847	\$112	\$146,204	\$91,754			\$0
F3N	YE	N	1/31/2012	12	12950636569	10/1/2011	12/31/2011		\$91,754	\$0	\$88,443	\$25,311			\$0
F3N	Q1	N	4/15/2012	8	12951447040	1/1/2012	3/31/2012		\$25,311	\$0	\$3,429	\$28,740			\$0
F1A		A	5/7/2012	4	12971211224										
Totals									\$900,061	\$604,431					

O-Index (2009-2010)

Cmte. ID: C00327742 Cmte. Name: FRIENDS OF WEINER

Treasurer Name: BRAFF, NELSON Address: 254 PARK AVE SOUTH SUITE 12A, NEW YORK, NY 10010

Cmte. Type: H (HOUSE) Cmte. Designation: P (PRINCIPAL CAMPAIGN COMMITTEE OF A CANDIDATE) Filing Frequency: QUARTERLY FILER

Form Tp	Rpt Tp	Alt	Recpt Dt	Pgs	Begin Img#	Begin Cvg Dt	End Cvg Dt	Ltr Mail Dt	Begin Cash	Receipts	Disb	End Cash	Debits	Loans	Debits & Loans
F3N	Q1	N	4/15/2009	44	29933523484	1/1/2009	3/31/2009		\$134,184	\$109,242	\$48,756	\$194,670	\$1,667		\$1,667
F3N	Q2	N	7/15/2009	41	29934286319	4/1/2009	6/30/2009		\$194,670	\$76,378	\$80,788	\$232,280			\$0
F3N	Q3	N	10/15/2009	78	29934913843	7/1/2009	9/30/2009		\$232,280	\$182,475	\$82,001	\$332,734			\$0
F3N	YE	N	1/31/2010	78	10980228863	10/1/2009	12/31/2009		\$332,734	\$188,109	\$93,656	\$404,995			\$0
F3N	Q1	N	4/15/2010	123	10930610365	1/1/2010	3/31/2010		\$404,995	\$361,770	\$146,998	\$618,759			\$0
F3N	Q2	N	7/15/2010	104	10930957148	4/1/2010	6/30/2010		\$618,759	\$230,889	\$146,592	\$703,888			\$0
F3N	12P	N	9/2/2010	78	10931224011	7/1/2010	9/2/2010		\$703,888	\$86,482	\$87,208	\$703,140			\$0
F3N	Q3	N	10/15/2010	86	10931503888	8/28/2010	9/30/2010		\$703,140	\$169,888	\$107,484	\$765,542			\$0
F3N	12G	N	10/21/2010	38	10991779795	10/1/2010	10/13/2010		\$765,542	\$27,868	\$122,133	\$671,066			\$0
F3N	SOG	N	12/2/2010	176	10931897843	10/1/2010	11/23/2010		\$671,066	\$98,116	\$112,797	\$111,884	\$30,085		\$30,085
F3N	YE	N	1/31/2011	13	11930267447	11/23/2010	11/31/2010		\$411,684	\$12,264	\$111,888	\$312,265	\$0		\$0
F2N		N	1/31/2009	1	29980940771										
F6			9/1/2010	2	10931220427										
F6			9/4/2010	2	10931234833										
F6			9/2/2010	2	10931229474										
F6			9/8/2010	2	10931229394										
F6			10/31/2010	2	10991805272										
F6			10/24/2010	2	10931754155										
F6			10/30/2010	2	10991804888										
F6			10/22/2010	4	10931754155										
F6			10/27/2010	4	10931788684										
F6			10/18/2010	2	10931481133										
F6			10/20/2010	2	10931679811										
F6			10/18/2010	2	10991426763										
F2N		N	12/15/2010	1	10932112199										
Totals									\$1,628,371	\$1,450,290					

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O-Index (2007-2008)

Cmte. ID: C00327742 Cmte. Name: FRIENDS OF WEINER

Treasurer Name: BRAFF, NELSON Address: 254 PARK AVE SOUTH SUITE 12A, NEW YORK, NY 10010

Cmte. Type: H (HOUSE)

Cmte. Designation: P (PRINCIPAL CAMPAIGN COMMITTEE OF A CANDIDATE)

Filing Frequency: QUARTERLY FILER

Form Tp	Rpt Tp	All	Recpt Dt	Pgs	Begin Img#	Begin Cvg Dt	End Cvg Dt	Ltr Mail Dt	Begin Cash	Recpts	Disb	End Cash	Debts	Loans	Debts & Loans
MS-T			3/22/2007	1	27930366188										
F3	Q1	N	3/15/2007	43	27930366188	4/1/2007	6/30/2007		\$239,611	\$38,778	\$77,917	\$201,412	-	-	\$0
F3	Q2	N	7/15/2007	46	27980243283	4/1/2007	6/30/2007		\$239,611	\$38,778	\$77,917	\$201,412	-	-	\$0
F3	Q3	N	10/15/2007	43	28931810400	7/1/2007	9/30/2007		\$181,083	\$36,610	\$67,561	\$150,132	-	-	\$0
F3	YE	N	1/31/2008	57	28930311143	10/1/2007	12/31/2007		\$181,083	\$36,610	\$67,561	\$150,132	-	-	\$0
F3	Q1	N	4/15/2008	55	28930810058	4/1/2008	6/30/2008		\$138,156	\$139,241	\$80,410	\$214,987	-	-	\$0
F3	Q2	N	7/15/2008	60	28991463995	4/1/2008	6/30/2008		\$138,156	\$139,241	\$80,410	\$214,987	-	-	\$0
F3	Q3	N	10/15/2008	58	28933519135	7/1/2008	9/30/2008		\$185,153	\$33,892	\$15,817	\$213,328	\$0	-	\$0
F3	Q4	N	12/31/2008	60	2893410742	10/1/2008	12/31/2008		\$185,153	\$33,892	\$15,817	\$213,328	\$0	-	\$0
F3N	30G	N	12/4/2008	27	28934753628	10/1/2008	11/24/2008		\$182,115	\$26,787	\$82,554	\$146,348	-	-	\$0
F3N	30G	N	1/31/2009	33	28930841495	10/1/2008	12/31/2008		\$182,115	\$26,787	\$82,554	\$146,348	-	-	\$0
F1A	A	A	1/31/2007	4	27960039197										
F2N	N	N	1/31/2007	8	27940123433										
F6			11/3/2008	2	28934190100										
F6			10/30/2008	2	28934115723										
F6			10/31/2008	2	28993090960										
F6			10/29/2008	2	28934113068										
F6			11/2/2008	2	28993096284										
Totals									\$379,314	\$524,612					

Friends of Weiner (C00327742)**2012 General Election Contributions Not Refunded/Redesignated, Listed by Contributor**

Name of Contributor	Date of Contribution	Contribution Amount
Abraham, Daniel S.	5/25/2011	\$2,500.00
Abraham, Ewa	5/25/2011	\$2,500.00
Bell, Barbara	4/25/2011	\$2,500.00
Bell, Evan	5/3/2011	\$2,500.00
Buttenwieser, Ann L.	2/22/2011	\$2,500.00
Buttenwieser, Lawrence B.	2/22/2011	\$2,500.00
Clark, Richard B.	5/18/2011	\$2,500.00
Edelman, Martin Lee	5/16/2011	\$2,500.00
Freidman, Evgeny	3/30/2011	\$2,500.00
Glick, Marc H.	3/29/2011	\$2,500.00
Goldstein, Barbara	3/31/2011	\$2,500.00
Jarecki, Henry G.	3/28/2011	\$2,500.00
Kaylie, Gloria W.	5/25/2011	\$2,500.00
Kuperberg, David ²	2/14/2011	\$2,500.00
Lazar, Rande H.	3/29/2011	\$2,500.00
McQuillan, Peter	3/31/2011	\$2,500.00
Muss, Harriet	5/10/2011	\$2,100.00
Myers, Michael	6/14/2011	\$2,500.00
Rose, Adam R.	3/28/2011	\$2,500.00
Roth, George	3/9/2011	\$2,500.00
Rovt, Alexander	3/9/2011	\$2,500.00
Rovt, Maxwell	3/31/2011	\$2,500.00
Rovt, Olga	3/9/2011	\$2,500.00
Silverstein, Larry A.	3/31/2011	\$2,100.00
Steiner, David	5/4/2011	\$2,500.00
Weisz, David	3/31/2011	\$2,500.00
Zeckendorf, William	3/29/2011	\$2,500.00
Total Amount Not Refunded/Redesignated		\$66,700.00

² The contribution from David Kuperberg was earmarked through ACTBLUE on 2/14/11. It was received by Friends of Weiner on 2/24/11.

Friends of Weiner (C00327742)

2012 General Election Contributions Not Refunded/Redesignated, Listed by Report

Name of Contributor	Date of Contribution	Contribution Amount
2011 April Quarterly Report		
Kuperberg, David ³	2/14/2011	\$2,500.00
Buttenwieser, Ann L.	2/22/2011	\$2,500.00
Buttenwieser, Lawrence B.	2/22/2011	\$2,500.00
Roth, George	3/9/2011	\$2,500.00
Rovt, Alexander	3/9/2011	\$2,500.00
Rovt, Olga	3/9/2011	\$2,500.00
Jarecki, Henry G.	3/28/2011	\$2,500.00
Rose, Adam R.	3/28/2011	\$2,500.00
Glick, Marc H.	3/29/2011	\$2,500.00
Lazar, Rande H.	3/29/2011	\$2,500.00
Zeckendorf, William	3/29/2011	\$2,500.00
Freidman, Evgeny	3/30/2011	\$2,500.00
Goldstein, Barbara	3/31/2011	\$2,500.00
McQuillan, Peter	3/31/2011	\$2,500.00
Rovt, Maxwell	3/31/2011	\$2,500.00
Silverstein, Larry A.	3/31/2011	\$2,100.00
Weisz, David	3/31/2011	\$2,500.00
Subtotal:		\$42,100.00
2011 July Quarterly Report		
Bell, Barbara	4/25/2011	\$2,500.00
Bell, Evan	5/3/2011	\$2,500.00
Steiner, David	5/4/2011	\$2,500.00
Muss, Harriet	5/10/2011	\$2,100.00
Edelman, Martin Lee	5/16/2011	\$2,500.00
Clark, Richard B.	5/18/2011	\$2,500.00
Abraham, Daniel S.	5/25/2011	\$2,500.00
Abraham, Ewa	5/25/2011	\$2,500.00
Kaylie, Gloria W.	5/25/2011	\$2,500.00
Myers, Michael	6/14/2011	\$2,500.00
Subtotal:		\$24,600.00
Total Amount Not Refunded/Redesignated		\$66,700.00

³ The contribution from David Kuperberg was earmarked through ACTBLUE on 2/14/11. It was received by Friends of Weiner on 2/24/11.